

Michigan Farm Market Task Force

FINAL REPORT TO THE MICHIGAN COMMISSION OF AGRICULTURE

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Task Force Contributors

Members of the Task Force are volunteers who represent a broad spectrum of agriculture, academia, and State and local governments. Dr. Mark Skidmore, Morris Chair State and Local Government Finance and Policy at Michigan State University, and Tom Kalchik, Associate Director of the Michigan State University Product Center, were designated as co-facilitators of the Task Force. A list of Task Force members is attached to this report as Appendix A. The Task Force included a broad array of representatives from the farm market/agri-tourism industry, the Farm Bureau, local government, and Michigan State University Extension.

Executive Summary

Over the past 20 years agricultural producers have increasingly produced value-added products as means to increasing profits. One aspect of this trend has been direct marketing of farm products to final consumers. The result has been an expansion in agriculture tourism, including farm markets. As farm operations engaged in more on-site retail activity, conflicts have arisen regarding oversight of these emerging on-farm businesses. The purpose of the Farm Market Task Force is to explore ways that might make understanding this oversight responsibility more clear to both farmers and local officials.

In order to address the inconsistencies between townships in addressing the regulation of farm markets, the Task Force recommends the following:

- Efforts should be made to assure the adoption of the Model Zoning Ordinance Provisions within the Agricultural Tourism Local Zoning Guidebook created by the Michigan Agricultural Tourism Advisory Commission.
- The Task Force sees a role for the Right to Farm (RTF) Act as part of the solution and recommends that a Farm Market GAAMP committee be created to further clarify the relationship between RTF, farm markets and other organizations and agencies that have responsibility for activities that occur at those facilities.
- There are a number of aspects of agricultural tourism operations that the Task Force did not believe were covered under RTF, but also need to be addressed. The Task Force therefore recommends that these issues be addressed through legislative action.
- It is also clear that very little is known about the economic impact of agri-tourism. A study should be conducted to better understand what is suspected to be a very sizable economic contribution to Michigan's economy.

Introduction

The Michigan Farm Market Task Force was established at the request of Michigan Commission of Agriculture. Its purpose is to address potential challenges with regard to public sector management of the emerging direct marketing industry within Michigan farm community. According to the Michigan Agricultural Tourism Advisory Commission Model Zoning Ordinance Provisions, “there are a number of practices that are often critical to the farm’s survival that fall under conditions that are prohibited or are subject to limitations or require special permissions. These tourism activities allow the general public onto the farm...” The Task Force recognizes that the established local policies/rules that have guided business at agricultural operations in the past are not necessarily designed to address the specific challenges of this emerging industry. The Task Force worked to identify possible means of addressing these challenges.

In this report we provide an overview of the Task Force activities, highlighting the key concerns and challenges the group worked through to come to a recommendation. We then provide a detailed summary of the Task Force recommendation, and offer some concluding remarks.

Task Force Process

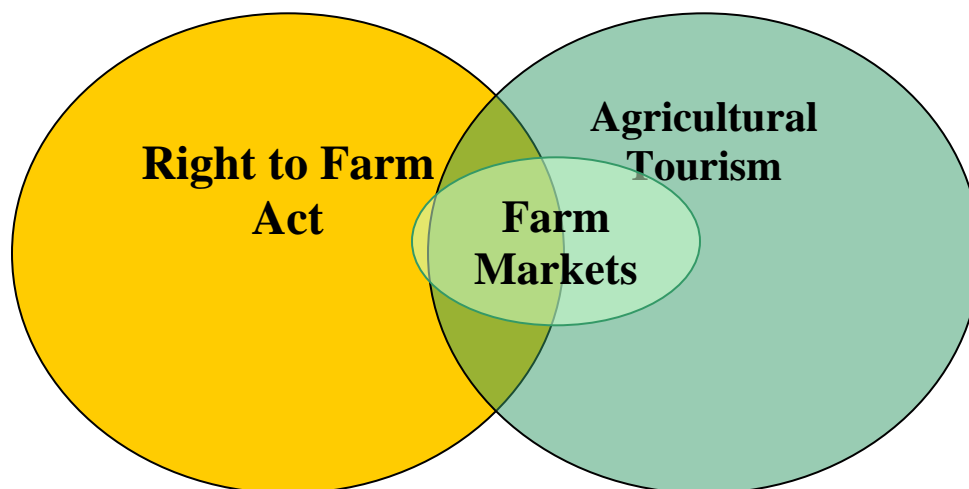
The Task Force held six plenary sessions between March 31, 2008 and July 28, 2008. Prior to each meeting the co-facilitators provided relevant information for the Task Force members. This information included agendas for each meeting, the Michigan Right to Farm Act (Act 93 of 1981, as amended), Report of Recommendations from the Michigan Agricultural Tourism Advisory Commission, and that Commission’s publication titled Agricultural Tourism Local Zoning Guidebook and Model Zoning Ordinance Provisions. From time to time the Task Force requested other documents such as the Michigan Agricultural Processing Act (Act 381 of 1998) and reports from experts on issues of importance to the Task Force such as details about the Right to Farm (RTF) Act, Michigan Court of Appeals rulings relative to the RTF Act, and the Attorney General’s informal opinions relative to the RTF Act and information from the Michigan Department of Labor and Economic Growth, Bureau of Construction Codes. Task Force members provided documents such as the recently enacted Agricultural Tourism Ordinance for Washington Township in Macomb County.

Issues and Options

A major issue the Task Force wrestled with is in understanding the relationship between farm markets, the Right to Farm Act and agricultural tourism. Co-facilitator Dr. Mark Skidmore created a Venn diagram to assist the Task Force in this understanding. A copy of the Venn diagram is provided below. This diagram depicts the potential relationships between the Right to Farm Act, Agricultural Tourism, and Farm Markets. Farm Markets largely fall within the domain of Agricultural Tourism. Components of both Farm Markets and Agricultural Tourism fall within the domain of RTF. The overlap of these three “universes”, however, is fuzzy and potentially subject to interpretation. One of the Task Force’s key objectives was to define these relationships more precisely.

VENN DIAGRAM

RIGHT TO FARM, AGRICULTURAL TOURISM AND FARM MARKETS



The diagram helped the Task Force recognize that certain aspects of the Right to Farm (RTF) Act and agri-tourism overlap, and that farm markets exist in both domains but largely in the domain of agri-tourism. The Task Force recognizes that the RTF Act does address farm markets in a very limited sense, mainly in the realm of roadside stands. However, more advanced practices of farm marketers may reach beyond to scope of RTF. The Task Force has developed lists of practices that are likely to fall in the area defined as both agri-tourism and RTF, as well as practices that are likely to fall in the area defined as agri-tourism only.

With such a diverse group, it is not surprising that we had a diverse set of opinions regarding the Task Force's ultimate recommendation. Michigan is a state that has a tradition of local government autonomy. For some in the group, there was a concern that too much intervention would seriously weaken the autonomy of local officials when it came to zoning issues. It was recognized that a GAAMP that was perceived to go too far in usurping local authority might lead to a legal dispute. On the other hand, there was also a concern that in some regions local officials were unresponsive in addressing the needs of this emerging industry. There was a general acknowledgment that existing zoning and other laws that guide development were not designed to accommodate the needs of this industry. In addition, the group recognized that RTF cannot exceed other state and federal laws. These apply to areas such as food safety, building code requirements, etc. The Task Force had to consider the preservation of local autonomy as well as state and federal requirements, while at the same time develop a recommendation

that would ultimately serve to remove unnecessary regulatory barriers to farm market entrepreneurs.

By consensus, the Task Force identified a number of specific farm market activities that fall under the protection of RTF, and has a number of identified activities that require approvals from various local, state and federal authorities. While it is very difficult to completely identify all the activities that might occur in the context of farm markets, the next section provides a detailed list of core farm market activities with corresponding authorities from which approval may be required. It is anticipated that a number of basic farm market activities will require nothing more than following the guidelines to be provided in the proposed farm market GAAMP. However, the Task Force also recognizes that a number of activities will require approvals from different levels of government. For example, any structure in which the public will be allowed to enter must comply with state construction and building codes. Similarly, the processing of raw materials must follow the guidelines set by the Right to Process Act and the Food Code. In cases where processing is occurring, farm market operators must also obtain zoning approvals from local authorities because the Right to Process Act specifically states that all processing activity must first be approved by local zoning authorities. More details regarding these issues are provided in the next section.

In our initial discussions several Task Force members leaned toward recommending that a GAAMP be written to accommodate a wide range of farm market and agri-tourism activities. However, as the Task Force reviewed the legal documents and other materials, it became clear that if a farm market GAAMP is written in a way that does not carefully address only those practices that clearly fall under RTF, the value of the GAAMP, and possibly the Right to Farm Act, could be compromised. While the overall recommendation is that a GAAMP should be written, the Task Force recognizes that the GAAMP cannot supersede existing state or federal laws, and for many activities which involve the health and safety of the public, farm market activities must comply with local ordinances. It was noted by the Task Force that GAAMPs will have to address issues regarding health and safety very carefully, and when appropriate defer to local authorities. Issues such as restrooms, parking, road congestion, emergency plans, and lighting may require local approval. Due to time constraints, the Task Force did not discuss in detail state and federal requirements such as building codes, processing and food preparation. Due to the limited time horizon and given that state and federal requirements are more clearly defined and articulated, a decision was made not to focus heavily on these regulations.

With this background information, we now provide an outline of our recommendation to the Michigan Commission of Agriculture.

Recommendation

Statement of Right to Market

Traditionally, agricultural operations sold their commodities in bulk to large wholesale buyers. As competitive pressures mounted on these operations, some were not situated to continue operations by exclusively selling into these traditional commodity markets. Many farming operations sought means to capture more value from their production by providing additional services to their customers. Some of these activities included providing transportation to deliver their commodities to wholesale buyers, installing

packing operations to provide more retail ready produce to wholesale buyers, etc. Eventually many of these farm operators recognized the financial opportunities of selling directly to consumers rather than wholesale markets. In doing so, these operators were able to maintain their farming operations and the benefits of those operations to local communities, including economic development, open space, fresh produce, etc. As the consumer trend toward buying locally produced products continues to build, farm markets became increasingly important to local communities.

The ability to sell the products from a farming operation is a right enumerated in the Right to Farm Act. Without this ability, many farming operations are not economically viable. All farms under the Right to Farm Act (PA 93 of 1981, as amended) expressly have the right to create and operate roadside stands or farm markets (Section 2(b)(i)). Local ordinances, regulations or resolutions that limit this ability are preempted by the Right to Farm Act (Section 4(6)).

Although RTF clearly indicates that farms have the right to operate “farm markets”, specific activities that fall into such a definition are not specifically enumerated. The Task Force has therefore attempted to provide further guidance by offering a more specific set of definitions and terms to assist in the creation of a GAAMP.

Definitions and Terms

After hours of discussion and debate, by consensus the Task Force settled on the following farm market definition. Within this farm market definition are a number of terms which require clarification as well. These terms are further defined with in the accompanying footnotes.

A Farm Market is a farm retail facility¹ and is part of a farm as defined by the Michigan Right to Farm Act.² At least 50%³ of the farm products⁴ marketed through the farm market must be produced by the farm with which it is affiliated⁵ (measured over a five year timeframe to limit exposure of the farm market to crop failure). It includes the packing, processing fermenting, distilling, and otherwise converting the farm products

¹ The term “facility” does not necessarily mean a physical structure. It can simply mean an area where a transaction between a consumer and producer can be consummated.

² According to the RTF Act, a “farm” means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products.

³ For purposes of evaluation by the Michigan Department of Agriculture, the primary measure will be 50% of the floor space devoted to sales and, if that is questionable, then 50% of the gross sales dollars of the farm market will be used.

⁴ According the RTF Act, a “farm product” means those plants and animals useful to human beings produced by agriculture and includes but is not limited to forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae livestock including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur as determined by the Michigan Commission of Agriculture.

⁵ The concern here is that the working farm might not be an ideal location for a retail operation. In such a case, the retail location could conceivably be off the farm (e.g., at main rural intersection), but a farm market cannot be located in a non-rural area. For example, a “farmers market” is typically located in an urban area, and this is clearly not a “farm market.”

into a form that makes them saleable to consumers. The farm market may process foods more extensively in accordance with Michigan Right to Process laws. It can operate seasonally or year around, and may include marketing activities to attract consumers and facilitate transactions between consumers and the farm market operator.

Activities

The Task Force recognizes that the Right to Farm Act addresses farm markets in a very limited sense, mainly in the realm of roadside stands. More advanced practices of farm marketers may reach beyond to scope of RTF. The Task Force developed a list of activities that may occur as part of a farm market and identified the regulating body for each activity. Some activities may have multiple agencies regulating it. Some activities may be regulated by different agencies depending on the scope of the activity. For example, an activity that involves the consumption of food will almost always be regulated by the local health department.

The following table lists various farm market activities and the Task Force's best estimate of how it is regulated. While there is not currently a GAAMP for farm markets, the Task Force envisioned a GAAMP that would include a number of specified activities as indicated in the table.

In addition to the regulatory agencies, all plumbing, mechanical work, building, and HVAC activities must be completed by licensed contractors and approved under building codes.

FARM MARKET ACTIVITIES REGULATORY COMPLIANCE CHART				
<u>Activity</u>	<u>Activity regulated by:</u>			
	<u>RTF Act & GAAMP</u>	<u>Federal</u>	<u>State</u>	<u>Local</u>
Bakery			MDA if selling only	Health Dept. if on-site food consumption
Bon Fires				Safety
Camping				Safety
Carnival Rides				Safety
Cheese Production			MDA	Health Dept. if on-site food consumption
Cider Mill (non- alcoholic)			MDA if selling only	Health Dept. if on-site food consumption
Community Supported Agriculture	X			
Concerts				Traffic, noise

FARM MARKET ACTIVITIES REGULATORY COMPLIANCE CHART				
Activity	Activity regulated by:			
	<u>RTF Act & GAAMP</u>	<u>Federal</u>	<u>State</u>	<u>Local</u>
Cooking Demos	If cooking only			Health Dept. if on-site food consumption
Corn Mazes	X			
Farm B & B's				Health Dept. for on-site food consumption and hotel (depending on size)
Farm Education	X			
Farm Tours	X			
Festivals				Safety, Health Dept. for on-site food consumption
Fishing Pond	X			
Food Retreats				Health Dept. for on-site food consumption
Haunted Barns/Trails				Safety
Hay Rides	X			
Horseback Riding	X			
Hunting Preserves	X		DNR/MDA	
Meat Processing		USDA	MDA	Health Dept.
Mud Runs				Safety
On-farm Dairy			MDA	Health Dept. if on-site food consumption
On-farm Distilleries		ATTB	MDA/MLC	
On-farm Weddings				Health Dept. for on-site food consumption
Petting Farms	X			
Picnic Areas	X			
Play-scapes				Safety
Riding Stables	X			
U-Pick	X			
Winery		ATTB	MDA/MLC	

It is assumed that all agricultural production issues already covered under Right to Farm and existing GAAMPs would still be addressed by RTF. For example, horseback riding would require additional guidance, but the care of the horses is already covered under the Care of Farm Animal GAAMPs and the manure issue from those horses would be covered under the Manure GAAMPs.

Conclusion

The Task Force recognizes that farm markets specifically, and agri-tourism more generally will become increasingly important to the agriculture industry. The Task Force also recognizes that existing documents do not provide clear guidance for farm market operators or local authorities regarding the degree to which the RTF exempts farm market activities from other regulations. A GAAMP will serve to clarify for farm markets and for local authorities what approvals are required for a given set of farm market activities. With these considerations in mind, the Task Force recommends the following:

- The Michigan Agricultural Tourism, Local Zoning Guidebook and Model Zoning Ordinance should be adopted across Michigan in order to provide clarity of process and procedures for the farm community.
- A GAAMP Task Force should be created to write language that would provide standards for those parts of a Farm Market covered under RTF
- Additional legislative action should be taken to address those parts of agricultural tourism that are not covered by RTF.
- A study should be commissioned to identify the current and future economic impact of a farm market/agri-tourism activity in Michigan. Currently, there is not enough information regarding the importance of this emerging industry to regional and state economies.

On behalf of the Task Force, the facilitators thank the Agriculture Commission of Michigan for calling upon this group of thoughtful individuals to consider the challenges faced by this emerging industry. The group is very appreciative of the opportunity to offer what it hopes is a useful recommendation and stands ready to provide any additional assistance it can to the Commission.

APPENDIX A

MICHIGAN FARM MARKET TASK FORCE Membership List

Bill Anderson

Legislative Liaison
Michigan Townships Association
Lansing, MI

Julie M. Cowie, Clerk

Casco Township (Allegan County)
Project Manager
Lakeshore Harvest Country, Inc.
South Haven, MI

Timothy R. Fischer

Deputy Policy Director
Michigan Environmental Council
Lansing, MI

Dr. Ron Goldy

District Extension Vegetable Educator
Michigan State University
Benton Harbor, MI

Henry L. Green, Executive Director ⁶

Bureau of Construction Codes
Department of Labor and Economic
Growth
Lansing, MI

Abby Jacobson

Westview Orchards
Washington Twp., MI

Jim Johnson

Acting Director
Environmental Stewardship Division
Michigan Department of Agriculture
Lansing, MI

Tom Kalchik, Associate Director

MSU Product Center
Venture Development Office
Michigan State University
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Gary R. Kirsh

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Washington, MI

Jeanne M. Lipe

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Kevin R. MacRitchie

TMZ Farm
Hell, MI

Ken Nye

Michigan Farm Bureau
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George Papadelis

Telly's Greenhouse
Troy, MI

Mark Skidmore

Morris Chair in State and Local
Government Finance and Policy
Michigan State University
East Lansing, MI

Bob Tritten

Southeast Region District Fruit Agent
Michigan State University Extension
Flint, MI

⁶ Mr. Green left government service on July 12, 2008 but provided input into the Task Force before his departure.

APPENDIX B

FRAMEWORK FOR THE RECOMMENDATION OF A FARM MARKET GAAMP TO THE COMMISSION OF AGRICULTURE

Introduction: This section must cover the transition of farms toward direct marketing and the movement of the consuming public toward the purchase of local foods.

Statement of Right to Market: This section should cover the fact that all farms under the Right to Farm Act (PA 93 of 1981 as amended) expressly have the right to create and operate roadside stand or farm market (Section 2(b)(i)). Local ordinances, regulations or resolutions that, except as enumerated below, limit this ability are preempted by the Right to Farm Act (Section 4(6)).

Definition(s): This section should define *farm markets* and all aspects of a markets that needs to be defined for clarity including; *retail facility, farm, farm operation, 50% of the products marketed, packing, processing, activities to attract consumers, 50% of the annual gross sales of the Farm Market, 50% of the sales area, cleaning, washing, grading, sorting, pitting, packaging, cooling and packing of farm products and processing and otherwise converting the farm products into a form that makes them saleable to consumers.*

Farm Markets and State and Federal Laws: This section needs to state that all farm markets must abide by all applicable state and federal laws that apply to their operation.

RTF cannot preempt state and federal Laws. Include a list of such laws with examples of how they apply to farm markets) Include a disclaimer that the list is for illustrative purposes and does not include all state and federal Laws that may apply to a farm market.

Farm Markets and Local Ordinances: This must state that in those cases where local ordinances, regulations or resolutions address public health (Section 4(7)) or public safety those requirements must be met by the farm market.

(Include a list of such ordinances, regulations or resolution with examples of how they apply to farm markets). Include a disclaimer that the list is for illustrative purposes and does not include all local ordinances, regulations or resolutions that may apply to a farm market.